



**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING**
ENFORCEMENT DIVISION
DIRECTIVE

**DIRECTIVE
NUMBER
219**

**DISTRIBUTION
DATE
October 1, 1998**

1. **SUBJECT: GROOMING STANDARDS COMPLAINTS**
2. **PURPOSE:** To set forth the procedures for handling complaints involving dress codes or grooming standards.
3. **BACKGROUND:** In the precedential decision DFEH vs. Paramedicus (1980) Decision No. 80-04, the Fair Employment and Housing Commission (FEHC) held that:

"...minor sex-based distinctions in dress and grooming codes which do not significantly burden the employment opportunities or the terms and conditions of employment afforded one sex in favor of the other, or which do not hinder an employee's ability to perform the job, do not constitute sex discrimination within the meaning of the FEPA."

The FEHC also established regulations regarding grooming standards allowing employers to impose physical appearance, grooming or dress standards. Such standards, however, cannot discriminate on the basis of sex, cannot burden the individual in his or her employment, and must be flexible enough to take into account religious practices (Cal. Code Regs., tit. 2, §§ 7287.6, subd. (c); 7291.1, subd. (f)(2); and 7293.3, subd.(c)(2)).

In January 1995, the Fair Employment and Housing Act (FEHA) was amended to state that an employer may not refuse to allow an employee to wear pants on account of the sex of the employee (Gov. Code, § 12947.5).

There are some exceptions to this, however, including that an employer may require an employee to wear a uniform in a particular occupation, and that an employer may require an employee to wear a costume while the employee is portraying a specific character or a dramatic role. Also, according to the language in the FEHA, the FEHC may exempt an employer from the requirements of this new section for "good cause shown."

The considerations which should be given to accepting complaints regarding dress codes and grooming standards are listed below.

4. **PROCEDURES:**

A. **Complaints Which Should Be Accepted:**

The following are examples of complaints which should be accepted:

- 1) Unless the complaint involves a "no pants" policy, the only sex discrimination complaints to be accepted are those where the grooming or dress code create sex based distinctions which:
 - a) are not minor;
 - b) significantly burden the employment opportunities or other terms or conditions of one sex in favor of the other; or
 - c) hinder an employee's ability to perform the job on the basis of sex.
- 2) Sex discrimination complaints involving a "no pants" policy of the employer should be accepted without regard to the criteria stated in 4.A.1) above and if the employer:
 - a) does not have a good cause exemption from the Commission;
 - b) does not require uniforms for all employees; or
 - c) does not require a costume for the portrayal of a specific role or dramatic part as a part of the employment.
- 3) Complaints where uniforms are required for only one sex and the cost is not borne by the employer.
- 4) Complaints where women are required to wear sexually provocative or revealing clothing or uniforms which may encourage or result in sexual harassment.

B. **Examples of Complaints Which Should Not be Accepted:**

The following are examples of complaints which should not be accepted on the basis of sex discrimination:

- 1) Men are not allowed to wear beards or moustaches.

- 2) Women are allowed to wear earrings but men are not.
- 3) The employer has established standards for hair length.

C. Special Considerations:

There are instances when a grooming standard or dress code cannot be tied to sex discrimination, **but** the complainant has the right to file a complaint based on another form of discrimination. Listed below are some examples of such complaints that will be accepted, but not on the basis of sex discrimination:

- 1) Complaints regarding facial hair, hair length, or clothing related to a religious belief or racial/cultural identity.
- 2) Complaints where a skin condition disability precludes shaving.
- 3) Complaints where an employer's standard is a pretext for discrimination in that it is not applied to others of a different race or national origin.

D. Dual Filing With the U.S. Equal Employment Opportunity Commission (EEOC):

Complaints taken under the guidelines of this Directive shall be dual filed with EEOC if they are otherwise jurisdictional.

5. APPROVAL:

Nancy C. Gutierrez, Director

Date